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WHO IS TAX CRIMINAL? CRIMINOLOGY PERSPECTIVE IN INDONESIA

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Speaking of tax means dealing with the state's ability to finance all its activities. In Indonesia, taxation was studied not only in the economic field, but also in the science of administration, law, sociology and even criminology are involved in discussion on tax. Revenue from tax sector has become the prominent share of Indonesia State Budget whereas the fund is almost 80% of the budget. The obligation to pay tax is the responsibility of all parties (individuals and entities) which governed by law, both by Constitutional Law and Taxation Law. Accordingly, it has formal consequences in case of violation of the law. Do all taxation violations become tax crimes? Are all the wrongdoers are tax criminals? The purpose of this article is to identify who tax criminal is, in accordance with criminology perspective in Indonesia. Determining crime and criminal are generally associated with Penal Code. In criminology, there are also definitions about the crime and deviant behavior from experts' perspectives. Furthermore, the demarcation of criminal is also defined. In this article, besides the tax crime and tax criminal, victim and social reaction towards tax violations will be described in criminology perspective.

Keywords: crime, criminal, criminology, tax, tax criminal

1. CRIME DEFINITION

In social life, there are some understandings about the difference between criminal behaviors and non-criminal behaviors. One part of non-criminal behavior is usually known as deviant behavior. Crime is a pattern of behavior that performed by an individual or organizations in the community that is detrimental to society, which in turn is defined as a violation of law which related to consequence or penalty. While deviant behavior is a pattern of behavior which is contrary to the moral sense of the society, and the wrongdoers are given non-formal reactions (Mustafa, 2012). Crime needs to be distinguished to deviant behavior, with the aim to produce proper treatment.

Any action occurred in society needs to be examined, whether it is a good action or bad one, in order to generate optimum social condition. The society may not be free of troubles, both crime and deviant behavior. Even Durkheim affirmed that crime as a normal phenomenon because there is no society without crime.

Crime is the result of social interactions that occurs in the society. Mitigating the crime rate cannot be done by only using a reactive action in the form of punishment, but the important thing is to identify the root of the problem why a crime is committed. To a large extent, there will be attained an integrated mechanism that can reduce crime rate.

The following will describe some of definitions of crime from experts' perspectives including criminologists. Famous philosopher Plato had already explained about what a crime is. Mackenzie (1981) alleged that Plato described the crimes by three different analysis, such as (1) the crime as ignorance, (2) the crime as a psychological aberration, and (3) the crime as a disease.

Thorsten Sellin in 1938 defined that crime is only a form of norms deviation. Meanwhile, according to Edwin Hardin Sutherland, crime is any action that is destructive or creates social wounds or social disadvantage, which by law may be endorsed or may not be acceptable. Furthermore, Sutherland in his book *Principles of Criminology* (1960) stated that criminal behavior is an action in violation of law. However bad an action, it is not a crime if it is not prohibited by law. For Herman and July Schwendinger (1975), in addition to social harm, the crime also includes all that impedes the right to acquire the dignity of human existence.

In Indonesia Penal Code stated that "no action shall be punished, unless by virtue of a prior statutory penal provision". Referring to the rule, each action, regardless assessed poorly by society, if such action is not organized and categorized by penal code as prohibited action, as a consequence such action cannot be considered as a crime (MK Darmawan, 2014).

2. CRIMINAL DEFINITION

Line up with the definition of crime, criminal definition also has many versions. In his article titled *Who Is Criminal*, Paul W. Tappan (1947) convey the thought that started out from Sutherland opinion about crime. The article described the meaning of criminal corresponding to relationship with the penal code and criminal meaning based on its relationship with the perspectives of sociologists and criminologists. Starting from an explanation about white-collar crime and white-collar criminal, Tappan drew conclusions about who criminal is.

According to the law perspectives, the criminal is one who violates the criminal law (penal code), and gets punishment for violating the act. But here and now, bad behavior is performed by a person or group in a society, which there are norms within the society. Based on the condition, according to sociologists and criminologists, criminal be punished by a court is represented all other criminals. Other criminals are persons who act violations of norms or rules that harm another, but are not considered as crimes in penal code.

Understanding of crime and criminal will have implications on the ability to contribute to upholding social justice. In this article will be described about crimes and criminals within the scope of taxation in Indonesia.

3. TAX AND ITS BENEFITS

Tax is a long way in the whole world and will never become an outmoded issue. Countries or other organizations are in need of fund to finance all their activities. General and technical provisions about collection money are regulated by the State or the leaders of organizations. Some may call the money by the term dues, tax, levy, contribution or any other term. There are many definitions of tax. Some of them are from the experts and also according to the Act. Understanding tax by Leroy Beaulieu is either help directly or indirectly imposed by the public power of the population or of the goods to cover government spending. Meanwhile, according to Prof. Dr. Rochmat Soemitro, SH., "tax is a shift of wealth from the people to the state treasury to finance recurrent expenditures and the surplus is used for public saving which is the main source for financing public investment".

In his book, Mardiasmo (2002) suggested the definition of tax is a levy of the people to the state under the Act (which may be in force) with no services (rewards) directly established and used to pay for state general expenses.

The formal definition used by the Indonesian Government is referred to Indonesia Law Number 16 of 2009 concerning General Provisions and Tax Procedures, explicitly "Tax is a mandatory contribution to the state owed by individuals or entities that are enforceable under the Act, to not get rewarded directly and used for the purposes of the state for the greatest prosperity of the people".

Amount needed by Indonesia to finance all his activities each year can be seen in the Indonesian State Budget. Throughout this time the fund used to finance these expenditures, approximately 70% - 80% of the revenue derived from the tax sector. The remainder is covered by non-tax revenue and loan (both foreign and domestic loan).

Tax is an obligation that must be carried out, while the subject is referred to taxpayer. Indonesia Law on General Provisions and Tax Procedures mentioned that the taxpayer is an individual or entity, including the tax payer, tax withholder, and the tax collector, who has the rights and tax obligations in accordance with the tax provisions.

Indonesia tax administration system known as *self-assessment*, where citizens are given the authority to carry out their tax obligations independently. Ranging from getting a Taxpayer Identification Number (NPWP), calculate the amount of tax, up until filling the tax return (SPT).

Tax is appealing to mug up, because fund collected from the tax sector will be utilized for the greatest prosperity of the people in the appearance of country development. Tax arising from the country needs to finance its activities, development, personnel and other expenditures. Knowledge about tax, structure, or coverage limit widely studied by experts. In Indonesia, taxation studied not only in the economic field, but also in the science of administration, law, sociology and even criminology are involved in discussion on tax as the major point of Indonesian State Budget.

4. INDONESIA TAX AUTHORITY

The authority in tax collection and tax administration in Indonesia conducted by the Directorate General of Tax. Currently it is an echelon 1 unit and underneath coordination of the Ministry of Finance and held responsible to the Minister of Finance.

The existence of the Indonesia tax authority organizations are an enactment of Indonesia Constitution Law of 1945. In the Ministry of Finance Regulation, the main task of the Directorate General of Tax is to formulate and implement policies and technical standardization in the field of taxation. In carrying out its vision, the Directorate General of Tax has a mission "to collect tax revenue based on the taxation laws and able to realize financial independence of the State Budget through the effective and efficient tax administration system".

In accordance to the Indonesia National Legislation Program, it is being discussed in the parliamentary, by the year 2018 will be established a newfangled structure of Directorate General of Tax. This new form will apart from Ministry of Finance and directly responsible to the President.

5. TAXATION REGULATION IN CRIMINAL LAW PERSPECTIVE

Indonesia tax regulation stated in Indonesia Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended by Act Number 16 of 2009. The Act is often referred to

the KUP Law. Paying tax is an onus for citizens who meet certain criteria. The contributions made to the state is compulsory.

In addition to the KUP Law, Indonesia also has other Laws which clearly defined the types of each taxes and its mechanisms, such as the Income Tax Law, Value Added Tax and Sales Tax on Luxury Goods (VAT Law), Law on Land and Building Tax, Tax Collection Law and Stamp Duty Law.

Violation of the tax law undertaken by the taxpayer, as it concerns administration measures, will subject to administrative penalty by issuing Notice of Tax Collection (commonly referred to STP), whereas involving criminal actions related to taxation will subject to criminal penalty.

As prevailed in KUP Law "criminal investigations in the field of taxation is a series of actions taken by the investigator to discover and collect evidence with the evidence that enlighten criminal behavior in the field of taxation that occurred and find the suspect".

In tax regulation reigned in Indonesia, violations in taxation relating to criminal law are described lucidly in some articles of KUP Law. Ranging from action due to negligence or willful misconduct. In these Articles, not only a set of violations committed by the taxpayer (citizens), but also by the employees of the Directorate General of Taxes. Furthermore, tax violations also can be comprehended in some articles of Land and Building Tax Law, Stamp Duty Law, along with Tax Collection Law as well.

6. TAX CRIMINAL

Actions carried out by both individuals and corporations, whether committed intentionally or due to negligence, which was come across to contravene the tax regulations, would bestow forfeitures. Who are the victims of violating such taxation rules then? Who suffer the loss? It is enough here to convey a lucid illustration, for example in a murder case, which is a conventional crime, the elements of the murder can be clearly recognized. There will be actor who committed the murder, it will be quite easily identified the victim, the person who has died as an upshot of the murder, and subsequently the motive will be revealed.

Speaking of tax deliberately, would further lead to discuss about money. The fund which its number evidently recorded in the Indonesia State Budget. The fund which accounts for nearly 80% of the entire account, which regrettably has not been able to finance 100% of Indonesia need. Tax money is such a superb to Indonesia, because it is the greatest source, it is the backbone of financing to the country. Starting from rewarding civil servants, building infrastructure, up until paying loan interest which is the residue of preceding year loan.

Having considered the benefits and tax performing for the state, tax regulations are constructed to conserve the fund collection process in order to keep a penny misplaced. But here and now, not a little (a euphemism to express "many") those who deliberately violate the rules and tax regulations in Indonesia. In view of the fact that one tax regulation is violated, it will reduce the money that should be gathered by the state. It is undoubtedly, more or less the loss, the amount that should be added to the Indonesian State Budget, will alter the country's ability to pay for all needs. The victims are not Directorate General of Taxation as Indonesia Tax Authority, nor the leaders of the country, but the concrete victims are the state and the entire people of Indonesia. The more vulnerable the state's power to finance all the needs, the more debt and its interest to be burdened by our children and grandchildren in the future. For this reason, it will give immense picture about how

hazardous the impact as the consequence of tax violating. In term of socio-legal understanding of the crime, breaching the tax regulations is a crime against social welfare.

In order to get a broader understanding to tax violation and criminology, identification of the victims is a foremost thing to do, where one of the study objects in criminology is that there are losers or often so called as victim. Furthermore, the quantity of events, the number of violations of tax regulations somewhat a lot repeatedly. Hence, it is essential to be assessed in criminology perspective.

It has been clearly pointed that violations of tax regulations convey solemn impact. Thus, it is necessary to find out who the tax villain or tax criminal is. As was pointed out by Paul W. Tappan in his article, published in the American Sociological Review in 1947, explicitly say that crime is itself simply the breach of the legal norms, a violation within this particular category of social control, thus, the criminal is, of course, the individual who has committed such acts of breach. It is the same elucidation to Sutherland and reaffirmed by Brown in 1990.

Likewise, label tagged to criminals who commit an infringement is still associated, connected and further led to the criminal law. *Nullum Crimen, Nulla Poena Sine Praevia Lege Poenalis*, there exists no crime and no punishment without a pre-existing penal law appertaining (Indonesian Penal Code).

It is scarce In Indonesia to hear the term or mention that clearly states a person is a tax criminal. Even if it comes out in the media, term tax embezzler is commonly used. A word which is considered to be better understood by people to replace the label of thief, pickpocket, or the person who embezzled money.

In the Tax Law, neither term tax embezzler nor tax criminals existed. But in KUP Law, it is elucidated about rights and obligations of citizens, both for registered taxpayer and unregistered one. Tax obligations set forth in the Tax Law, have two implications, administrative implications and criminal implications. Further explained that violations of tax obligations regarding administration procedures, will be subject to administrative penalty, while concerning criminal offenses in taxation will be subject to criminal penalty.

Infringement or violation against tax obligations, in term of criminology perspective, is one of the important details in the scope of the criminology study, for indicating the crime or violation itself. Within the discussion of crime, it is included the explanation about the type and how the crime was committed. After acknowledging the crimes, it will be easier to identify tax criminals. Referring to Paul W. Tappan, thenceforth, tax criminals are those who commit violations against the tax obligations.

Nevertheless, are all actions that violate the tax regulation are the tax crimes? Are all the wrongdoers are tax criminals? To be ascertained, the types of tax crimes need to be identified in advance. In view of the legal extent, the criminal is one who violates the criminal law (penal code), and gets punishment for violating the Act. Meanwhile, in criminology perspective, there is an estrangement that differentiates crime and deviant behavior. The rights and obligations concerning tax administration procedures can be associated with the norms in society (conduct norms). Whilst more specifically, the rights and obligations which have implications to criminal penalty is the rule of law (legal norms). In light of these criteria, it can be said that tax crimes are any actions of violation of tax regulation which carried out by individuals or entities that harm the social welfare that further lead to violation of the law and criminal sanctions existed. Whereas violations of tax regulations regarding tax administration measures so called as deviant behavior.

From the segregation of the two criteria, we can directly recognize the types of social reaction towards tax crimes. All violations of tax regulations and defined as violations of the law will be subject to social reaction refers to penal code, whereas violations of tax obligations regarding tax administration measures will be subject to the social reaction in the form of administrative penalty by issuing tax assessments and/or tax collection notice.

Having considered the crime types, tax crimes are not categorized as street crimes or blue-collar crimes. Tax crimes take place as crimes against social welfare, and it is often carried out by the smart parties in finding loopholes of tax regulations, in order to avoid tax liabilities. Thus, the tax crimes can be categorized as white-collar crimes, whereas the wrongdoers will be referred as white-collar criminals.

Classification of tax criminals concerning the Tax Law is still relatively minimal. It may attached due to the principle of Indonesian Penal Code, *ultimum remedium*, it gets into penal code as the final resort after executing unsuccessfully administrative approach. In current condition, tax criminals are classified intentionally only for those who violate the tax regulation that further lead to criminal law. Accordingly, wrongdoers concerning tax administration measures are not categorized as tax criminals, albeit it gives significant impact on state financial ability.

Taking into account of the substantial benefits and tax functions for the Indonesia, it should be considered to expand the scope of tax crimes as well as using the principle of *remedium premium* for certain tax violations. Understanding who the real tax criminal is, will help further improvement in tax policy making and aim to contribute to the advancement of taxation of Indonesia, the independence of Indonesia State Budget and for the greatest justice to all people, without trying to blame another theory or perspective.

7. CONCLUSION

However bad an action, it is not a crime if it is not prohibited by law. Fund collected from the tax sector will be utilized for the people in country development. Violation of the tax law undertaken by the taxpayer, as it concerns administration measures, will subject to administrative penalty by issuing Notice of Tax Collection, whereas involving criminal actions related to taxation will subject to criminal penalty.

In terms of criminology, the coverage of study is a violation of the social product, which consists of the crime itself, wrongdoers including its etiology, social reaction and the victim of the breach. The rights and obligations regarding tax administration activities can be associated with the conduct norms. Whilst the rights and obligations which have implications for criminal penalty is the legal norms. In light of these criteria, it can be said that tax crimes are any actions of violation of tax regulation which carried out by individuals or entities that harm the social welfare that further lead to violation of the law and criminal sanctions existed. Whereas violations of tax regulations regarding tax administration measures so called as deviant behavior.

Breaching the tax regulations is a crime against social welfare, thus the victim is the state and entire people of Indonesia. Wrongdoers who concerns administration measures are not included as tax criminal, whereas its impact to the country is also very significant. This should lead further improvement in tax regulation of Indonesia to expand the scope of tax crimes.

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